

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 247 of 1983

in

FIRST APPEAL No 159 of 1978

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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NAVINBHAI KHIMCHAND GANDHI

Versus

SHANTARAM V BANDOLE

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Appearance:

MR PB MAJMUDAR for Petitioner  
UNSERVED for Respondent No. 1  
MR RAJNI H MEHTA for Respondent No. 3

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CORAM : MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE H.L.GOKHALE

Date of decision: 18/03/97

ORAL JUDGEMENT

This appeal is filed by the appellant-original claimant against the award passed by the Motor Accident Claims Tribunal, Vadodara in MAC Petition No. 183 of 1976 and partly modified by the learned Single Judge of this court in First Appeal No. 159 of 1978.

The case of the appellant was that on February 12, 1976 at about 1.30 p.m. he was proceeding on Suvega Motor Cycle No. GTI 9028 from Gandhigate Baroda in the northern direction. When he was near Mandavi gate suddenly a motor truck No. MHS 9987 came from behind, tried to overtake the appellant at cross road and knocked down the appellant. The appellant sustained severe injury on his left thigh and other parts of his body. According to him, he remained as an indoor patient in SSG Hospital, Vadodara, till 1st June 1976 and thereafter in the Private Nursing Home of Dr. Pradeep Mehta. There was a permanent defect and the appellant is unable to work or to ride a bicycle or a scooter. Damage to Suvega Motor cycle was to the tune of Rs.1500/-. The appellant claimed Rs.30,000/- from the New India Assurance Co. as also against the owner and the driver of the Motor Truck. According to the appellant, at the time when the accident took place, he was 21 years of age and was working at his brother's shop and was getting an amount of Rs.400/- per month.

The claim of the claimant was resisted by the opponents. Opponent no.1 driver of the truck denied the averments made in the application by the claimants. According to him, the claimant was negligent inasmuch as he came at rushing speed on his scooter from Panigate side on wrong side and could not keep the balance as a result of which he dashed with the truck and fell down. Opponent no.2 also filed written statement supporting opponent no.1. The Insurance Company also took stand that it was not liable.

The tribunal after appreciating the facts and circumstances and evidence on record held that both the claimant as well as opponent no.1 were negligent. According to the Tribunal 60% negligence was on the part of the claimant whereas 40% was on the part of the opponent no.1. Regarding the quantum of the amount the Tribunal observed that ordinarily the claimant would have been entitled to an amount of Rs.9400/- as under:

Rs.1,500/- for loss of income;

Rs.5,000/- for pain shock and suffering;  
Rs. 800/- fee paid to Dr.Pradip Mehta;  
Rs. 800/- For out of pocket expenses - i.e.  
medicine and conveyance;  
Rs. 800/- for repair of Suvega Motor Cycle.  
Rs. 500/- for estimated expenditure for removal  
of nail.

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Rs.9,400/-  
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There was 60% negligence on his part, the Tribunal  
awarded Rs.3,760/- to the claimant.

Being aggrieved by the said order, the appellant  
filed the above appeal which came to be partly allowed by  
the learned Single Judge by order dt. February 28, 1983.

The learned Single Judge held that over and above  
Rs.3,760/-, the claimant was entitled to Rs.3,740/-.  
Thus, in all he was entitled to Rs.7,500/-.

The appellant has approached this court and has  
filed the present LPA for additional amount of  
Rs.10,000/-.

Looking to the totality of circumstances,  
particularly the facts that the appellant had suffered  
pain, shock and suffering; that there was permanent  
disability on his part, and that he was driving a light  
vehicle; in our opinion, ends of justice would be met if  
an amount of compensation is enhanced. From the evidence  
of Dr.Mehta, it is clear that the claimant has suffered  
physical disability. In these circumstances, amount of  
loss of future income also required to be considered on  
that basis. Again, the appellant has reasonably  
restricted his claim for enhanced compensation at  
Rs.10,000/-. In our view, therefore, the appellant can  
be granted the said amount.

In view of the above, this Letters Patent Appeal  
deserves to be allowed and is accordingly allowed. The  
appellant is entitled to additional amount of  
Rs.10,000/over and above the amount awarded by the Motor  
Accident Claims Tribunal and enhanced by the learned  
Single Judge of this court. The appellant will also be  
entitled to proportionate costs and interest at the rate  
of 6% per annum from the date of the application till the  
date of realisation. The appeal is accordingly allowed.

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